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OFFICE OF PETITIONS

In re Application of :
Hirai et al. : DECISION ON PETITION
Application No. 10/739,452 :
Filed: December 17, 2003 :
Atty Docket No. 60490 (50498) :

This is a decision on the "PETITION REQUESTING WITHDRAWAL OF HOLDING OF ABANDONMENT, UNDER 37 CFR 1.181(a)" filed May 17, 2006.

The above-identified application became abandoned for failure to file a timely and proper reply to the NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION mailed March 30, 2004. The Notice set a two-month time limit for applicants to pay additional claim fees in the amount of \$290 (for a non-small entity), with extensions of time obtainable under § 1.136(a). No reply considered received and no extension obtained, the above-identified application became abandoned on May 31, 2004. A Notice of Abandonment was mailed on May 4, 2006.

Within two months thereof, applicants filed the instant petition. Applicants contend that the application is not in fact abandoned. Applicants contend that they timely submitted all necessary papers and paid all necessary fees. In support thereof, applicants submitted a copy of their postcard receipt and a copy of the response as petitioners maintain it was mailed on April 6, 2004.

A postcard receipt, which itemizes and properly identifies the items, which are being filed, serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date

stamped thereon by the Office. See MPEP 503. A review of petitioners' postcard receipt reveals that: 1) it was date stamped as received in the USPTO on April 9, 2004; 2) it specifically identifies the items being filed, including "Check in the amount of \$145" and 3) it lacks any annotation of non-receipt of any item denoted on the postcard. Thus, petitioners' evidence is persuasive that the response to the Notice to File Missing Parts of Application was timely filed. (It is further noted that the response as re-supplied includes a certificate of mailing dated April 6, 2004, and thus, may also be considered timely filed pursuant to § 1.8(b)).

A review of the application record further reveals that the \$145 fee was previously processed on April 12, 2004.

In view thereof, the Notice of Abandonment mailed May 4, 2006 is **VACATED** and the holding of abandonment is hereby **WITHDRAWN**.

The petition under § 1.181 is **GRANTED**.

No fee is required on petition under § 1.181.

The Office of Initial Patent Examination (OIPE) has been advised of this decision. The application file is, thereby, forwarded to OIPE's technical support staff to withdraw the holding of abandonment.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a long, sweeping horizontal stroke extending to the right.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions